

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DAVID MALCOLM JONES,

Petitioner,

v.

CIVIL ACTION NO. 5:09-cv-00124

TERRY L. BILLINGSLEY,

Respondent.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the Petitioner's February 11, 2009, *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in Federal Custody*¹ [Docket 1] and the Petitioner's February 19, 2009, *Application to Proceed Without Prepayment of Fees and Costs* [Docket 3].

By *Standing Order* [Docket 2] entered on February 11, 2009, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On February 18, 2010, the Magistrate Judge submitted *Proposed Findings and Recommendation* [Docket 7] wherein it is recommended that this Court deny the Petitioner's *Application to Proceed Without Prepayment of Fees and Costs*, dismiss the Petitioner's *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in Federal Custody*, and remove this matter from the Court's

¹The document, as filed by the Petitioner, is titled *Motion Under 28 U.S.C. § 2243 of Actual Innocence*.


docket. Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*. The Court **ORDERS** that the Petitioner's *Application to Proceed Without Prepayment of Fees and Costs* [Docket 3] be **DENIED**, that the Petitioner's *Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus By a Person in Federal Custody* [Docket 1] be **DISMISSED**, and that this matter be **REMOVED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: April 5, 2010


IRENE C. BERGER, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA